

# Advice Letter Summaries

## SEPTEMBER 2008

<b>Campaign</b>	
<b>Chris Raymer</b> <b>Taxpayers for Maldonado</b> <b>Dated: September 9, 2008</b> <b>File Number A-08-137</b>	<p>If a contributor to a State candidate's general election refuses to accept his or her proportionate share of the candidate's return of general election contributions under Section 85318 upon defeat of the candidate in the primary election, the candidate shall pay the refused funds to the General Fund of the state.</p>
<b>Ash Pirayou</b> <b>Ash Pirayou representing</b> <b>Measure F Committee</b> <b>Dated: September 24, 2008</b> <b>File Number A-08-143</b>	<p>Under the Act, a local ballot measure committee may contribute its campaign funds remaining after the election to the general fund of the city's Convention and Visitor's Bureau for purposes of working toward expansion of the San Jose convention center.</p>
<b>Tony Krvaric</b> <b>San Diego County</b> <b>Republican Party</b> <b>Dated: September 3, 2008</b> <b>File Number A-08-145</b>	<p>A political party committee's payment, made directly to television stations on behalf of a candidate who entered into a contract with the stations to air the candidate's campaign advertisements, are non-monetary contributions to the candidate and, as such, are treated as campaign expenditures of the candidate which count against the candidate's voluntary expenditure ceilings.</p> <p><b>(Note: Portions of this letter were <u>superseded</u> in the Olson Advice Letter, No. A-08-177.)</b></p>
<b>Elena Chaves</b> <b>City of San Fernando</b> <b>Dated: September 30, 2008</b> <b>File Number A-08-163</b>	<p>During an election, candidates and committees involved in the election are required to file two pre-election campaign statements, the first 40 days before the election and a second 12 days before the election. Semi-annual statements are filed January 31 and July 31, respectively. The Act permits combining statements when an overlapping reporting period occurs or the filing of the semi-annual statement would be an additional, unnecessary filing to the two pre-election statements. In the requestor's situation, both pre-election statements cover reporting periods in 2008 while the election will be held in 2009. Thus, filing the two pre-election statements in connection with the January 13 election will satisfy the January 31, 2009, semi-annual filing requirement.</p>
<b>Conflicts of Interest</b>	
<b>Michael Antonini</b> <b>San Francisco Planning</b> <b>Commission</b> <b>Dated: September 17, 2008</b> <b>File Number I-08-117</b>	<p>City attorney sought advice regarding whether a planning commissioner who is disqualified under the Act's conflict of interest provisions can use the "public generally" exception to allow him to, nevertheless, make, participate in making, or influence government decisions regarding a rezoning plan when he owns a condominium unit in one of the project areas. While the requestor included information about the project size and the number of properties in the project</p>

	<p>area, he did not include property owner information as required under Regulation 18707.1(b)(1)(B)(i) such as percentage of all property owners or all residential owners in the jurisdiction that would be affected by the Plan.</p> <p>Additionally, the request did not include information regarding the number of property owners or residential property owners in the jurisdiction of planning commission. Because the requestor did not include sufficient facts in his request, we were unable to determine whether the public generally exception applied.</p>
<p><b>Marguerite Lawry</b>  <b>Bethel Island Municipal Improvement District</b>  <b>Dated: September 2, 2008</b>  <b>File Number A-08-128</b></p>	<p>A local official is advised that she does not have a conflict of interest in participating in a governmental decision because the governmental decision will have no material financial effect on any of her economic interests.</p>
<p><b>Dr. Marcus Doane</b>  <b>Department of Public Health</b>  <b>Dated: September 22, 2008</b>  <b>File Number I-08-140</b></p>	<p>Inspector with the Department of Public Health inquired as to a potential conflict of interest concerning his position and his several retirement and benefit accounts. Advisee has a defined benefit plan, a defined contribution plan, and a supplemental benefit account. Staff advised that the defined-benefit plan and supplemental benefit account do not qualify as “income” or “investments” under the Act. Because the advisee does not have more than \$2,000 in any one entity by virtue of his small investment in individual stocks, he also does not have a disqualifying economic interest in the defined contribution plan.</p>
<p><b>Cindy Gustafson</b>  <b>Tahoe City PUD</b>  <b>Dated: September 18, 2008</b>  <b>File Number A-08-148</b></p>	<p>The general manager of the Tahoe City PUD (TCPUD) does not have a conflict of interest when the TCPUD votes on whether to award a contract to the engineering firm owned by her husband so long as she does not make, participate in making, or influence any decision financially impacting that firm. The methodology proposed, by which the general manager removes herself from making, participating in making, or influencing any decisions impacting her husband’s firm, will prevent her from having a conflict of interest.</p>
<p><b>Britt L. Fussel P.E.</b>  <b>Assistant Director of the Tulare County Resource Management Agency</b>  <b>Dated: September 12, 2008</b>  <b>File Number I-08-149</b></p>	<p>An Assistant Director of the Tulare County Resource Management Agency will have a conflict of interest in decisions having a foreseeable and material financial effect on a business that is a source of income to a business partially owned by his spouse if his community property interest in the income would be \$500 or more.</p>
<p><b>Don McCone</b>  <b>Needles City Council</b>  <b>Dated: September 22, 2008</b>  <b>File Number I-08-151</b></p>	<p>City councilmember inquired as to whether his property holdings or business interest would create a disqualifying conflict of interest when the topic of mitigation of a possible casino was presented to a city council subcommittee. Staff advised that none of his holdings were directly involved in the potential decisions and governmental decisions were unlikely to have a reasonably foreseeable material financial effect on these holdings.</p>

<b>Stephen Kinney</b> <b>Economic Development</b> <b>Corporation of Oxnard</b> <b>(EDCO)</b> <b>Dated: September 24, 2008</b> <b>File Number A-08-152</b>	<p>Requestor sought advice regarding whether a not-for-profit corporation was considered a local government agency under the Act. Advised that the nonprofit was considered a local government agency. Therefore, it is required under Section 87300 to adopt a conflict of interest code for its employees and board members, or be included within a code.</p>
<b>Craig Geyer</b> <b>Goleta West Sanitary</b> <b>District</b> <b>Dated: September 24, 2008</b> <b>File Number A-08-153</b>	<p>An official's economic interest in real property within 500 feet of the property subject to a decision to improve two sewer lines is directly involved in the governmental decision. Because the financial effect of this decision is presumed to be material, the official may not participate in the decision unless he can show that there will be no financial effect, not even a single penny's effect, on the economic interest in real property and further determine that there will be no reasonably foreseeable material effects on his other economic interests.</p>
<b>Joanne Chapman, RN</b> <b>Coastal Valleys EMS</b> <b>Agency</b> <b>Dated: September 26, 2008</b> <b>File Number I-08-154</b>	<p>A Regional Trauma/Clinical Coordinator for a county agency inquired as to whether her former employment would preclude her from making decisions while in her new position. Staff advised that none of the tasks she listed among her job duties qualified as 'making, participating in making, or influencing a decision,' and she therefore had no disqualifying conflict of interest.</p>
<b>Mike Daly</b> <b>City of Jackson</b> <b>Dated: September 23, 2008</b> <b>File Number A-08-162</b>	<p>A local official is advised that he may participate in a governmental decision that may result in a decrease in his monthly water bill by \$10 because he will be affected in substantially the same manner as the public generally.</p>
<b>Douglas P. Haubert</b> <b>City Council of Lynwood</b> <b>Dated: September 30, 2008</b> <b>File Number A-08-164</b>	<p>The conflict-of-interest provisions of the Act do not bar a city council member from participating in the city council's decision to settle the issue of payment of attorneys' fees in a lawsuit in which she is a co-plaintiff and the city is the defendant because she is under no obligation to pay her attorney for fees or costs and she and her co-plaintiff have assigned to their attorney their right to recover attorneys' fees. Under these facts, she has no economic interest in the lawsuit.</p>
<b>Gift</b>	
<b>Lenna J. Tanner</b> <b>City of Chino</b> <b>Dated: September 2, 2008</b> <b>File Number I 08-130</b>	<p>Several questions concerning the receipt of free airport parking by public officials. Elected officials (and those in offices listed in Section 87200) cannot receive gifts of travel under the "gifts to agency" exception in Regulation 18944.2; thus the receipt of free parking is a gift that must be reported on the official's Form 700. If the city purchases the passes and provides the passes to their officials and employees, this would not be considered a gift, or income under Section 82030(b)(2) which exempts government salary from reporting. If the official pays down the gift within 30 days of receipt of the gift, the official will have no reporting obligation.</p>

<b>Roy Wasden</b> <b>Modesto Police Department</b> <b>Dated: September 8, 2008</b> <b>File Number A-08-135</b>	<p>An official sought advice regarding payments for travel, lodging, and subsistence in connection with his trip to Hawaii. Specifically, the official wished to know whether any of the payments are subject to reporting, gift limits, and other provisions of the Act. Official was advised that payments for his airfare are reportable gifts, not subject to gift limits. Payments for admission, and refreshments and similar non-cash nominal benefits provided directly in connection with a speech, panel, or seminar, as well as <i>necessary</i> lodging and subsistence are not reportable or subject to gift limits. Payments for lodging, subsistence and other expenses <i>not</i> connected to speeches and participation in panels are reportable gifts, subject to gift limits.</p>
<b>William G. Brennan</b> <b>New Motor Vehicle Board</b> <b>Dated: September 2, 2008</b> <b>File Number A-08-144</b>	<p>The Director of the New Motor Vehicle Board (NMVB) is advised that the use of a conference room, provided by a party, for the NMVB to use for hearings and/or conferences as part of its administrative procedures is not a gift to the agency that must be processed under Regulation 18944.2, as it does not provide a personal benefit to any agency officials.</p>
<b>Colleen Finnegan</b> <b>City of Carlsbad</b> <b>Dated: September 15, 2008</b> <b>File Number A-08-157</b>	<p>A gift of travel, including related lodging and subsistence, to a city designated employee who serves as the city's liaison in the sister cities program, from a government organization of the sister city in Japan, is not subject to the gift limits but is reportable on Form 700 unless another exception to the gift rules applies.</p>
<b>Honoraria</b>	
<b>Ben Russell</b> <b>Office of the Speaker of the Assembly</b> <b>Dated: September 25, 2008</b> <b>File Number A-08-161</b>	<p>A State official is advised that payments he received for any food review article he authored for a publication are not prohibited honoraria so long as he meets the record keeping requirements provided in Regulation 18932.1 for new businesses.</p>
<b>Lobbying</b>	
<b>Murdoch Walrath &amp; Holmes</b> <b>State Allocation Board,</b> <b>Office of Public School Construction</b> <b>Dated: September 12, 2008</b> <b>File Number I-08-147</b>	<p>Section 86205(f) does not prohibit a lobbying firm from receiving a fee based on a percentage of the funds received by its client from a state agency where the services provided by the firm consist of assisting the client in obtaining the state funding and the payment is not contingent upon passage or defeat, or approval or disapproval, of a proposed legislative or administrative action.</p>

<b>Mass Mailing</b>	
<b>Benjamin P. de Mayo</b> <b>County of Orange</b> <b>Dated: September 9, 2008</b> <b>File Number I-08-125</b>	<p>A county supervisor may, under Government Code, Sections 89001 and 18901, send a county-funded mailer that includes his name, so long as the name appears only in the letterhead, the return address, and in the destination address of the detachable self-mailer portion of the mailing.</p>
<b>Bill Rabenaldt</b> <b>Pismo Beach City Council</b> <b>Dated: September 9, 2008</b> <b>File Number A-08-131</b>	<p>A newsletter produced and disseminated via e-mail from a home computer is not a “mass mailing” under the Act, whose sender identification provisions do not require any additional source identification. Further, nothing in the Act presently specifies that a candidate’s express advocacy is a reportable campaign “expenditure” where the message is composed and published via e-mail by an unpaid person on a home computer, an activity that adds nothing to any “overhead” costs incurred to maintain the computer.</p>
<b>Revolving Door</b>	
<b>Tatiana Olea</b> <b>Public Utilities Commission</b> <b>Dated: September 24, 2008</b> <b>File Number I-08-146</b>	<p>The post-governmental employment restrictions do not prohibit a former employee of PUC, in her capacity as an employee of a PUC-regulated company, from participating in industry sponsored discussions and policy meetings, and generally discussing her views concerning PUC policy. She may also attend, without testifying or speaking, during the 12-month period after leaving PUC, hearings on matters in which she did not participate while employed at PUC. Twelve months after she has left PUC, she may testify and appear before PUC in matters she did not participate in while employed there.</p>
<b>David Nelson</b> <b>State Dept. of Housing and Community Development (HCD)</b> <b>Dated: September 15, 2008</b> <b>File Number I-08-150</b>	<p>General revolving door letter.</p>
<b>Ashraf Habbak</b> <b>Dated: September 15, 2008</b> <b>File Number I-08-158</b>	<p>A former State of California public official is advised that the post-employment restrictions in the Act do not prevent him from accepting post-governmental employment in the private sector and working as a consultant to his former State employer, but he may not make any appearance before his former State employer for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. So long as his employment as a consultant is limited to services performed to administer, implement, or fulfill the requirements of an existing contract,</p>

	and the services he provides do not involve the issuance, amendment, awarding, or revocation of any of the actions or proceedings involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property the one-year ban will not apply.
<b>Statements of Economic Interests</b>	
<b>Department of General Services</b> <b>Division of State Architect</b> <b>Dated: September 12, 2008</b> <b>File Number I-08-133</b>	<p>A state agency is advised that so long as the activities of the employees of an outside testing facility are related and limited to the development of standardized testing procedures to be used for determining whether or not detectable warning products meet state standards, and the employees are not making or participating in making any governmental decisions, the employees are not required to file SEI's.</p>

September 2008  
Juanita G. Lira